

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 1, 2012

SENATE BILL

No. 1228

Introduced by Senator Alquist

(Coauthors: Assembly Members Hill and V. Manuel Pérez)

February 23, 2012

An act to amend Section 1250 of, and to add Article 7.2 (commencing with Section 1323.5) to Chapter 2 of Division 2 of, the Health and Safety Code, relating to small house skilled nursing facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1228, as amended, Alquist. Small house skilled nursing facilities.

Existing law provides for the licensure and regulation of health facilities, including skilled nursing facilities, as defined, by the State Department of Public Health. Violation of these provisions is a crime.

This bill, commencing January 1, 2014, would create a new health facility licensing category for a small house skilled nursing facility, to be defined as a skilled nursing facility that is a stand-alone home, a facility consisting of more than one home, or a distinct area within a facility, as specified, that is licensed for the purposes of providing skilled nursing care in a homelike, noninstitutional setting. The bill would require that these facilities comply with applicable state law governing skilled nursing facilities, except as specified. The bill would require the department and the Office of Statewide Health Planning and Development to consult with specified entities on various aspects of small house skilled nursing facilities. The bill would require the department to adopt regulations implementing these provisions.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1250 of the Health and Safety Code is
2 amended to read:

3 1250. As used in this chapter, “health facility” means any
4 facility, place, or building that is organized, maintained, and
5 operated for the diagnosis, care, prevention, and treatment of
6 human illness, physical or mental, including convalescence and
7 rehabilitation and including care during and after pregnancy, or
8 for any one or more of these purposes, for one or more persons,
9 to which the persons are admitted for a 24-hour stay or longer, and
10 includes the following types:

11 (a) “General acute care hospital” means a health facility having
12 a duly constituted governing body with overall administrative and
13 professional responsibility and an organized medical staff that
14 provides 24-hour inpatient care, including the following basic
15 services: medical, nursing, surgical, anesthesia, laboratory,
16 radiology, pharmacy, and dietary services. A general acute care
17 hospital may include more than one physical plant maintained and
18 operated on separate premises as provided in Section 1250.8. A
19 general acute care hospital that exclusively provides acute medical
20 rehabilitation center services, including at least physical therapy,
21 occupational therapy, and speech therapy, may provide for the
22 required surgical and anesthesia services through a contract with
23 another acute care hospital. In addition, a general acute care
24 hospital that, on July 1, 1983, provided required surgical and
25 anesthesia services through a contract or agreement with another
26 acute care hospital may continue to provide these surgical and
27 anesthesia services through a contract or agreement with an acute
28 care hospital. The general acute care hospital operated by the State

1 Department of Developmental Services at Agnews Developmental
2 Center may, until June 30, 2007, provide surgery and anesthesia
3 services through a contract or agreement with another acute care
4 hospital. Notwithstanding the requirements of this subdivision, a
5 general acute care hospital operated by the Department of
6 Corrections and Rehabilitation or the Department of Veterans
7 Affairs may provide surgery and anesthesia services during normal
8 weekday working hours, and not provide these services during
9 other hours of the weekday or on weekends or holidays, if the
10 general acute care hospital otherwise meets the requirements of
11 this section.

12 A “general acute care hospital” includes a “rural general acute
13 care hospital.” However, a “rural general acute care hospital” shall
14 not be required by the department to provide surgery and anesthesia
15 services. A “rural general acute care hospital” shall meet either of
16 the following conditions:

17 (1) The hospital meets criteria for designation within peer group
18 six or eight, as defined in the report entitled Hospital Peer Grouping
19 for Efficiency Comparison, dated December 20, 1982.

20 (2) The hospital meets the criteria for designation within peer
21 group five or seven, as defined in the report entitled Hospital Peer
22 Grouping for Efficiency Comparison, dated December 20, 1982,
23 and has no more than 76 acute care beds and is located in a census
24 dwelling place of 15,000 or less population according to the 1980
25 federal census.

26 (b) “Acute psychiatric hospital” means a health facility having
27 a duly constituted governing body with overall administrative and
28 professional responsibility and an organized medical staff that
29 provides 24-hour inpatient care for mentally disordered,
30 incompetent, or other patients referred to in Division 5
31 (commencing with Section 5000) or Division 6 (commencing with
32 Section 6000) of the Welfare and Institutions Code, including the
33 following basic services: medical, nursing, rehabilitative,
34 pharmacy, and dietary services.

35 (c) (1) “Skilled nursing facility” means a health facility that
36 provides skilled nursing care and supportive care to patients whose
37 primary need is for availability of skilled nursing care on an
38 extended basis.

39 (2) “Skilled nursing facility” includes a “small house skilled
40 nursing facility (SHSNF),” as defined in Section 1323.5.

1 (d) “Intermediate care facility” means a health facility that
2 provides inpatient care to ambulatory or nonambulatory patients
3 who have recurring need for skilled nursing supervision and need
4 supportive care, but who do not require availability of continuous
5 skilled nursing care.

6 (e) “Intermediate care facility/developmentally disabled
7 habilitative” means a facility with a capacity of 4 to 15 beds that
8 provides 24-hour personal care, habilitation, developmental, and
9 supportive health services to 15 or fewer persons with
10 developmental disabilities who have intermittent recurring needs
11 for nursing services, but have been certified by a physician and
12 surgeon as not requiring availability of continuous skilled nursing
13 care.

14 (f) “Special hospital” means a health facility having a duly
15 constituted governing body with overall administrative and
16 professional responsibility and an organized medical or dental staff
17 that provides inpatient or outpatient care in dentistry or maternity.

18 (g) “Intermediate care facility/developmentally disabled” means
19 a facility that provides 24-hour personal care, habilitation,
20 developmental, and supportive health services to persons with
21 developmental disabilities whose primary need is for
22 developmental services and who have a recurring but intermittent
23 need for skilled nursing services.

24 (h) “Intermediate care facility/developmentally
25 disabled-nursing” means a facility with a capacity of 4 to 15 beds
26 that provides 24-hour personal care, developmental services, and
27 nursing supervision for persons with developmental disabilities
28 who have intermittent recurring needs for skilled nursing care but
29 have been certified by a physician and surgeon as not requiring
30 continuous skilled nursing care. The facility shall serve medically
31 fragile persons with developmental disabilities or who demonstrate
32 significant developmental delay that may lead to a developmental
33 disability if not treated.

34 (i) (1) “Congregate living health facility” means a residential
35 home with a capacity, except as provided in paragraph (4), of no
36 more than 12 beds, that provides inpatient care, including the
37 following basic services: medical supervision, 24-hour skilled
38 nursing and supportive care, pharmacy, dietary, social, recreational,
39 and at least one type of service specified in paragraph (2). The
40 primary need of congregate living health facility residents shall

1 be for availability of skilled nursing care on a recurring,
2 intermittent, extended, or continuous basis. This care is generally
3 less intense than that provided in general acute care hospitals but
4 more intense than that provided in skilled nursing facilities.

5 (2) Congregate living health facilities shall provide one of the
6 following services:

7 (A) Services for persons who are mentally alert, persons with
8 physical disabilities, who may be ventilator dependent.

9 (B) Services for persons who have a diagnosis of terminal
10 illness, a diagnosis of a life-threatening illness, or both. Terminal
11 illness means the individual has a life expectancy of six months
12 or less as stated in writing by his or her attending physician and
13 surgeon. A “life-threatening illness” means the individual has an
14 illness that can lead to a possibility of a termination of life within
15 five years or less as stated in writing by his or her attending
16 physician and surgeon.

17 (C) Services for persons who are catastrophically and severely
18 disabled. A person who is catastrophically and severely disabled
19 means a person whose origin of disability was acquired through
20 trauma or nondegenerative neurologic illness, for whom it has
21 been determined that active rehabilitation would be beneficial and
22 to whom these services are being provided. Services offered by a
23 congregate living health facility to a person who is catastrophically
24 disabled shall include, but not be limited to, speech, physical, and
25 occupational therapy.

26 (3) A congregate living health facility license shall specify which
27 of the types of persons described in paragraph (2) to whom a
28 facility is licensed to provide services.

29 (4) (A) A facility operated by a city and county for the purposes
30 of delivering services under this section may have a capacity of
31 59 beds.

32 (B) A congregate living health facility not operated by a city
33 and county servicing persons who are terminally ill, persons who
34 have been diagnosed with a life-threatening illness, or both, that
35 is located in a county with a population of 500,000 or more persons,
36 or located in a county of the 16th class pursuant to Section 28020
37 of the Government Code, may have not more than 25 beds for the
38 purpose of serving persons who are terminally ill.

39 (C) A congregate living health facility not operated by a city
40 and county serving persons who are catastrophically and severely

1 disabled, as defined in subparagraph (C) of paragraph (2) that is
2 located in a county of 500,000 or more persons may have not more
3 than 12 beds for the purpose of serving persons who are
4 catastrophically and severely disabled.

5 (5) A congregate living health facility shall have a
6 noninstitutional, homelike environment.

7 (j) (1) “Correctional treatment center” means a health facility
8 operated by the Department of Corrections and Rehabilitation, the
9 Department of Corrections and Rehabilitation, Division of Juvenile
10 Facilities, or a county, city, or city and county law enforcement
11 agency that, as determined by the state department, provides
12 inpatient health services to that portion of the inmate population
13 who do not require a general acute care level of basic services.
14 This definition shall not apply to those areas of a law enforcement
15 facility that houses inmates or wards that may be receiving
16 outpatient services and are housed separately for reasons of
17 improved access to health care, security, and protection. The health
18 services provided by a correctional treatment center shall include,
19 but are not limited to, all of the following basic services: physician
20 and surgeon, psychiatrist, psychologist, nursing, pharmacy, and
21 dietary. A correctional treatment center may provide the following
22 services: laboratory, radiology, perinatal, and any other services
23 approved by the state department.

24 (2) Outpatient surgical care with anesthesia may be provided,
25 if the correctional treatment center meets the same requirements
26 as a surgical clinic licensed pursuant to Section 1204, with the
27 exception of the requirement that patients remain less than 24
28 hours.

29 (3) Correctional treatment centers shall maintain written service
30 agreements with general acute care hospitals to provide for those
31 inmate physical health needs that cannot be met by the correctional
32 treatment center.

33 (4) Physician and surgeon services shall be readily available in
34 a correctional treatment center on a 24-hour basis.

35 (5) It is not the intent of the Legislature to have a correctional
36 treatment center supplant the general acute care hospitals at the
37 California Medical Facility, the California Men’s Colony, and the
38 California Institution for Men. This subdivision shall not be
39 construed to prohibit the Department of Corrections and

1 Rehabilitation from obtaining a correctional treatment center
2 license at these sites.

3 (k) “Nursing facility” means a health facility licensed pursuant
4 to this chapter that is certified to participate as a provider of care
5 either as a skilled nursing facility in the federal Medicare Program
6 under Title XVIII of the federal Social Security Act (42 U.S.C.
7 Sec. 1395 et seq.) or as a nursing facility in the federal Medicaid
8 Program under Title XIX of the federal Social Security Act (42
9 U.S.C. Sec. 1396 et seq.), or as both.

10 (l) Regulations defining a correctional treatment center described
11 in subdivision (j) that is operated by a county, city, or city and
12 county, the Department of Corrections and Rehabilitation, or the
13 Department of Corrections and Rehabilitation, Division of Juvenile
14 Facilities, shall not become effective prior to, or if effective, shall
15 be inoperative until January 1, 1996, and until that time these
16 correctional facilities are exempt from any licensing requirements.

17 (m) “Intermediate care facility/developmentally
18 disabled-continuous nursing (ICF/DD-CN)” means a homelike
19 facility with a capacity of four to eight, inclusive, beds that
20 provides 24-hour personal care, developmental services, and
21 nursing supervision for persons with developmental disabilities
22 who have continuous needs for skilled nursing care and have been
23 certified by a physician and surgeon as warranting continuous
24 skilled nursing care. The facility shall serve medically fragile
25 persons who have developmental disabilities or demonstrate
26 significant developmental delay that may lead to a developmental
27 disability if not treated. ICF/DD-CN facilities shall be subject to
28 licensure under this chapter upon adoption of licensing regulations
29 in accordance with Section 1275.3. A facility providing continuous
30 skilled nursing services to persons with developmental disabilities
31 pursuant to Section 14132.20 or 14495.10 of the Welfare and
32 Institutions Code shall apply for licensure under this subdivision
33 within 90 days after the regulations become effective, and may
34 continue to operate pursuant to those sections until its licensure
35 application is either approved or denied.

36 SEC. 2. Article 7.2 (commencing with Section 1323.5) is added
37 to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 7.2. Small House Skilled Nursing Facilities

1323.5. (a) For purposes of this article, the following definitions apply:

(1) “Home” means an apartment, home, or other similar unit that serves 12 or fewer residents.

(2) “Small house skilled nursing facility (SHSNF)” or “facility” means a skilled nursing facility that is licensed pursuant to this article for the purposes of providing skilled nursing care in a homelike, noninstitutional setting and is one of the following:

(A) A stand-alone home.

(B) A facility that consists of more than one home.

(C) A distinct area within an existing skilled nursing facility that otherwise meets the definition of home, pursuant to paragraph (1), has been dedicated to the small house model, has a distinct entry, and has no through traffic of staff, residents, or visitors not affiliated with the household.

(3) “Versatile worker” means a certified nursing assistant who provides personal care, socialization, activity aide services, meal preparation services, and laundry and housekeeping services.

(b) Commencing January 1, 2014, a facility may be licensed by the department pursuant to this article if the facility meets all of the following requirements:

(1) The facility shall comply with all state laws and regulations that govern skilled nursing facilities, except as provided in this paragraph. If regulations are in conflict with any provision of this article, the department or the Office of Statewide Health Planning and Development may waive one or more of these regulations in order to permit these facilities to implement the provision and meet licensure requirements, if the department or the office determines that doing so will not jeopardize the health and safety of a facility’s residents. In making this determination, the department or office shall consider whether the practice contained in the provision has been demonstrated safely in other states, and shall also consider peer-reviewed research.

(2) To the extent permitted under federal law, the facility shall provide meals cooked on the premises of each home, and not prepared in a central kitchen and transported to the home.

(3) To the extent permitted under federal law, the facility shall utilize versatile workers for purposes of resident care.

1 (4) The facility shall meet all federal and state direct care
2 staffing requirements for skilled nursing facilities. All direct care
3 staff shall be onsite, awake, and available within each home at all
4 times.

5 (5) The facility shall provide ~~for~~ consistent staff assignments
6 and self-managed work teams of direct care staff. Licensed nursing
7 staff shall direct the versatile workers in all activities delegated
8 under the licensed nurses' scope of practice. A versatile worker
9 may be supervised by nonclinical staff at the discretion of the
10 facility.

11 (6) (A) The facility shall provide training for all staff involved
12 in the operation of the home to be completed prior to initial
13 operation of the home, concerning the philosophy, operations, and
14 skills required to implement and maintain self-directed care,
15 self-managed work teams, a noninstitutional approach to long-term
16 care, safety and emergency skills, food handling and safety, and
17 other elements necessary for the successful operation of the home.
18 Versatile workers and other staff interacting with residents in the
19 homes shall demonstrate proficiency in these areas as well as the
20 facility's policies and procedures, conflict resolution, and
21 self-directed care principles.

22 (B) Replacement staff shall undergo the training described in
23 subparagraph (A) within six weeks of commencing employment
24 with the facility.

25 (C) Any staff members who are employed on a short-term,
26 temporary basis due to permanent staff illness or unexpected
27 absence are exempt from the training requirements specified in
28 subparagraph (A).

29 (7) To the extent permitted under federal law, each home shall
30 consist of a homelike, rather than institutional, environment,
31 including the following characteristics:

32 (A) The home shall be accessible to disabled persons, and shall
33 be designed as a house, an apartment, or a distinct area within an
34 existing skilled nursing facility that meets the standards described
35 in subdivision (a) that is similar to housing available within the
36 surrounding community, that includes shared areas that would
37 only be commonly shared in a private home or apartment.

38 (B) The home shall not, to the extent practicable, contain
39 institutional features. These include, but are not limited to, nursing
40 stations, medication carts, room numbers, and wall-mounted

1 licenses or certificates that could appropriately be accessed through
2 other means.

3 (C) (i) The home shall include resident rooms that accommodate
4 not more than two residents per room. Facilities are encouraged
5 to include private, single-occupancy bedrooms that are shared only
6 at the request of a resident to accommodate a spouse, partner,
7 family member, or friend, and that contain a full private and
8 accessible bathroom.

9 (ii) Double occupancy rooms shall contain a full private and
10 accessible bathroom, and each resident's bedroom area shall be
11 visually separated from the other by a full height wall or a
12 permanently installed sliding door, folding door, or partition. Walls,
13 doors, or partitions used to separate resident bedroom areas shall
14 provide visual and acoustic separation. A door leading to each
15 resident's bedroom area in addition to the corridor door is not
16 required.

17 (iii) Each resident shall have direct use of, and access to, an
18 exterior window at all times.

19 (D) The home shall contain a living area where residents and
20 staff may socialize, dine, and prepare food together that provides,
21 at a minimum, a living room seating area, a dining area large
22 enough to accommodate all residents and at least two staff
23 members, and a full kitchen that may be utilized by residents.

24 (E) The home shall contain ample natural light.

25 (F) The home shall have built-in safety features to allow all
26 areas of the facility to be accessible to residents during the majority
27 of the day and night.

28 (G) The home shall provide access to secured outdoor space.

29 (H) The home shall endeavor to create an aging in place
30 environment where long-stay residents may form permanent homes
31 with each other.

32 (c) The facility shall be certified to participate as a provider of
33 care either as a skilled nursing facility in the federal Medicare
34 Program under Title XVIII of the federal Social Security Act (42
35 U.S.C. Sec. 1395 et seq.) or as a nursing facility in the federal
36 Medicaid Program under Title XIX of the federal Social Security
37 Act (42 U.S.C. Sec. 1396 et seq.), or both.

38 (d) The department and the Office of Statewide Health Planning
39 and Development shall consult with providers, employee
40 organizations, consumer advocates, and other interested

1 stakeholders, including groups with demonstrated experience in
2 small house skilled nursing facility operations, on the physical,
3 operational, and other aspects of small house skilled nursing
4 facilities.

5 (e) The department shall adopt regulations to implement this
6 section.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.